IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.885 OF 2003

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders	Court's or Judge's Orders

Shri G.N.Salunke for the Petitioner.
Smt. G.P.Mulekar, A.P.P. for the Respondent No.1-State.
Mr.M.S.Lage for the Respondent No.2.

CORAM: S.R.Dongaonkar, J.
DATE : 31st March, 2006.
P.C.:

1. Heard Shri Salunke for the Petitioner, Smt.G.P.Mulekar, A.P.P. for the Respondent No.1-State and Mr. M.S.Lage for the Respondent No.2.

2. **Rule.** Respondent No.2 waives service. Heard forthwith.

3. This Petition has been filed under Section 482 of the Criminal Procedure Code by the husband of the Respondent No.2 who has secured the order of maintenance in her favour in Miscellaneous Criminal Application

No.19 of 2000 by an order dated 19th September, 2002 passed by the Judicial Magistrate First Class, Ajara under Section 125 of the Criminal Procedure Code. It may be stated that the main ground on which the opposition to this order is made, is the ground of adultery.

4. The Petitioner-husband had preferred revision application against the order of grant of maintenance in the Court of Additional Sessions Judge, Gadhinglaj bearing No.20 of 2002. He lost the said revision application by the order of the learned Additional Sessions Judge dated 17th January, 2003. To challenge the said order, this Petition is filed.

5. The learned counsel for the Petitioner, Shri Salunkhe has submitted that there is ample evidence on record to suggest that the Respondent-wife was living in

adultery. There is ample evidence of the witnesses examined by the Petitioner-husband, i.e., his son-Nilesh and Vithabai who is a widow sister of Petitioner-husband that the Respondent-wife was living in adultery, though, the Court below disbelieved their versions while passing the impugned order.

6. The learned counsel for the Petitioner contends that the Petitioner-husband has obtained decree of divorce under Section 13(i) of Hindu Marriage Act, 1955 in H.M.P. No.9 of 2003 in the Court of Civil Judge Senior Division, Gadhinglaj, District Kolhapur dated 24th September, 2003 on the ground of adultery. And therefore, the Respondent-wife is not entitled for maintenance.

7. The learned counsel for the Respondents has stated that the Petitioner-husband should have moved

trial Court for getting the order of maintenance set aside under Section 127 of the Criminal Procedure Code claiming to the change of circumstances.

8. On perusal of record, it appears that cross-examination on the part of adultery of Respondent-wife was limited to only one suggestion which is denied. There are no suggestions regarding the instances noticed by the Petitioner’s son-Nilesh and his sister Vithabai.

9. The learned counsel for the Petitioner is unable to state for want of instructions as to whether any appeal has been preferred against the decree of divorce in H.M.P.No.9 of 2003 or whether any application for setting aside the order has been made by the Respondent-wife.

10. In these circumstances, both the parties need proper opportunity to

contest the matter more so considering the serious allegations against the Respondent-wife and consequent dis-entitlement of right of maintenance to her. Only order which appeares to be justified is to remand the matter to the trial Court for proper disposal of the matter according to the law by allowing the parties to lead further evidence, if any.

11. In these circumstances, order passed by the learned Additional Sessions Judge, Gadhinglaj in Criminal Revision Application No. 20 of 2002 dated 17th January, 2003 and that of learned Magistrate are hereby set aside and the matter is remanded back to the trial Court of the Judicial Magistrate First Class, Ajara for disposal according to the law by allowing the parties to lead the evidence, if any.

12. Record and proceeding be sent

to the lower Court. Liberty to apply in the lower Court for interim maintenance.

13. The Petition is disposed of.

(S.R.Dongaonkar, J.)